IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 395 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Applicant(s)
Versus
DHARAMSHI MORARJI CHEMICALS CO LTD . & 5 - Respondent(s)

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Appearance :
MR IM PANDYA, ASST. PUBLIC PROSECUTOR for Applicant(s) : 1,
MR AD OZA for Respondent(s) : 1 - 6.
MR ASHISH D OZA for Respondent(s) : 1 - 6.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 30/06/2006

ORAL JUDGMENT

1. The applicant – State of Gujarat has preferred this revision application under Section 397 r.w. Section 401 of the Code of Criminal Procedure; 1973 challenging the order passed by the learned

Additional Sessions Judge & Special Judge, Bhavnagar, in Criminal Case No. 2 of 1987 on 25th February, 1999 below application at Exh.10.

2. Shri I.M.Pandya, learned APP, has urged that the order of the trial Court is assailed on the ground that the trial Court ought to have considered the aspect that against the order of learned Single Judge, which was reported in *1996(2) FSC Page-283*, State had preferred Letters Patent Appeal and in that Letters Patent Appeal, the Division Bench of Punjab & Haryana High Court has allowed the same and declared the Regulation – 19 of the Fertilizer Control Order; 1985 as quashed and set aside and therefore, the learned trial Court has clearly erred in relying upon the judgment, which was quashed and set aside by the Division Bench. Shri Pandya has also submitted that the competence of the complainant ought to have been adjudged based upon the provisions of Section – 21. In other words, that the complainant being public servant, his competency should have been held to be valid and proper for filing and maintaining the application and the discharge based on this ground is also not proper.

3. This Court has perused the application accompanied the impugned order and heard the learned counsel of the respective parties at length.

4. The impugned order clearly contains the finding that the contention regarding quashing of Regulation – 19 has not been accepted by the trial Court. The contention taken in the revision application is that the trial Court has accepted overruled judgment and ratio, which is, in fact, misconceived. In fact, the contention taken on behalf of the prosecution is that the provisions of Section – 11 of the Essential Commodities Act, empowers any public servant to maintain the complaint in Special Court. It been appropriately dealt with by the trial Court. It is required to be noticed that the trial Court has essentially allowed the discharge application Exh.10 on the ground that the complaint was not maintainable as it was not filed by the competent and authorized officer. The trial Court has relied upon the decision of Patna High Court reported in **1991 Criminal Law Journal Page-720** in case of ***Suresh Singh V/s. The State of Bihar*** and has recorded its finding that the complaint was not filed by the competent officer, who is specially authorized to file the complaint before the Special Court against the accused. The reliance placed by the prosecution on the provisions of Section – 11 and/or by the applicant on the provisions of Section – 21 of the Code of Criminal Procedure, defining the public servant, would be of no avail to the application, in view of the fact

that the Essential Commodities Act being a Special Act shall be viewed in its proper perspective. The Section - 11 of the Essential Commodities Act; 1955, though, provides that the complaint could be filed and maintained by the public servant as defined under Section – 21 of the Indian Penal Code but Section 12(AA)(1)(e) of the Essential Commodities (Special Provision) Act; 1981, which makes special provision by way of amending the Essential Commodities Act; 1955, provides that, *the Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an Officer of the Central Government or a State Government authorized in this behalf by the Government concerned or any person aggrieved or any recognized consumer association, whether such person is a member of that association or not, take cognizance of that offence without the accused being committed to it for trial.* Thus, the complainant, who was acting in his capacity as public servant was required to have the special authorization under Section 12(AA)(1)(e) of the Essential Commodities (Special Provision) Act; 1989 for lodging and maintaining the complaint against the accused person in Special Court. The trial Court has recorded that despite ample opportunity given to the complainant and prosecution for production of such authorization, it was not produced before the

Court and therefore, it was recorded by the trial Court that the complainant lacked the authorization to file the complaint. The applicant's reliance upon the Notification dated 2nd February, 1996 showing that the Agricultural Inspector was authorized is of no avail in view of the fact that the authority if at all shall not be treated to have been conferred upon the Agricultural Inspector with retrospective effect. In fact, the requirement of issuance of Notification in the year 1996 appointing and authorizing the Agricultural Inspector to lodge prosecution in respect of Clause – (e) of Sub-section (1) of Section – 12(AA) of the Essential Commodities Act. The Act, itself, goes to show that the public servant in his capacity as such without being a special authority could not have maintained the complaint.

5. In view of this, the revision fails as having being no merits. The order of the trial Court does not suffer from any infirmity and therefore, the same does not call for any interference in this revision application.

(S.R.BRAHMBHATT, J.)

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